

## **2005 DRAFTING REQUEST**

### **Bill**

Received: **01/12/2005**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Koskinen**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Business - crp inc, fran**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

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### **Pre Topic:**

DOA:.....Koskinen, BB0425 -

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### **Topic:**

Single sales factor apportionment for computer software, intellectual property, and services

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### **Instructions:**

See Attached

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### **Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>                               | <u>Reviewed</u>                                  | <u>Typed</u>           | <u>Proofed</u>          | <u>Submitted</u>       | <u>Jacketed</u> | <u>Required</u> |
|--------------|--|--|------------------------|-------------------------|------------------------|-----------------|-----------------|
| /?           |  |  |                        | _____                   |                        |                 | State           |
| /1           | jkreye<br>01/13/2005                         | jdyer<br>01/13/2005                              | rschluet<br>01/13/2005 | _____                   | lnorthro<br>01/13/2005 |                 | State           |
| /2           | jkreye<br>01/23/2005<br>jkreye<br>01/26/2005 | wjackson<br>01/24/2005<br>wjackson<br>01/26/2005 | pgreensl<br>01/24/2005 | _____<br>_____<br>_____ | sbasford<br>01/24/2005 |                 | State           |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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|----|--|--|------------|-------|------------|--|--|
| /3 |  |  | rschluet   | _____ | sbasford   |  |  |
|    |  |  | 01/26/2005 | _____ | 01/26/2005 |  |  |

FE Sent For:

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| /2           | jkreye<br>01/23/2005 | wjackson<br>01/24/2005 | pgreensl<br>01/24/2005 |                | sbasford<br>01/24/2005 |                 |                 |

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1-26  
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| /1           | jkreye<br>01/13/2005 | jdye<br>01/13/2005 | rschluet<br>01/13/2005 | <u>1/24</u><br>p8 | lnorthro<br>01/13/2005 |                 |                 |
| FE Sent For: |                      | 1/24 1/23          | 1/24<br>p8             | <u>1/24</u><br>p8 |                        |                 |                 |

**<END>**

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\*\*\*\*\*NOTES

FE Sent For:

<END>

## **2005-07 Budget Bill Statutory Language Drafting Request**

- **Topic: Single Sales Factor for High Tech**
- **Tracking Code: BB0425**
- **SBO team: Tax and Justice**
- **SBO analyst: John Koskinen**
  - **Phone: 266-2081**
  - **Email: john.koskinen@doa.state.wi.us**
- **Agency acronym: DOR**
- **Agency number: 566**

1. **Modify the computation of the sales factor to attribute receipts from computer software and intellectual property to the state where the property is used and receipts from services to the state where the benefit of the service is received.**

**See attached issue paper and drafting instructions from DOR.**

**Merry-Mason, Monica**

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**From:** Kraus, Jennifer - DOA  
**Sent:** Wednesday, January 12, 2005 10:46 AM  
**To:** Miller, Steve  
**Cc:** Koskinen, John; Merry-Mason, Monica  
**Subject:** Additional drafting request

Steve - I have an additional drafting request. Thanks - Jennifer



Stat Lang - high  
tech tax appo...



Legislative proposal  
apportion...

BB0425

**Legislative Proposal Summary  
Wisconsin Department of Revenue  
IS&E Division**

**November 12, 2004**

**TITLE: Source Receipts from Computer Software, Intellectual Property, and  
Services to the Location Where the Benefit Is Received for  
Apportionment Purposes**

**DESCRIPTION OF CURRENT LAW AND PROBLEM**

Under current law, multistate businesses determine the portion of their income taxable by Wisconsin using an apportionment formula. Under this formula, receipts from sales of services and the licensing or sale of the use of intellectual property are treated as Wisconsin sales if the income-producing activity occurs in Wisconsin. If the income-producing activity occurs in and outside Wisconsin, these receipts are divided between the states in proportion to the direct costs of performance incurred in the states having jurisdiction to tax the business.

This current treatment is based on the Uniform Division of Income for Tax Purposes Act (UDITPA), which had been promulgated in 1957. With the evolution from a manufacturing-based to a service-oriented, technology-based economy, it has become increasingly difficult for multistate businesses to comply with the current apportionment law. The treatment of computer software is unclear, as is the determination of what the income-producing activity is and where it is being performed in certain instances.

While the phase-in of single sales factor apportionment by 2003 Wisconsin Act 37 benefits multistate Wisconsin-based manufacturers and retailers who sell most of their products outside the state, it provides little relief to multistate technology companies and service providers. Generally, the receipts of a technology company or service provider are sourced to the company's business locations where its employees perform services. Thus the location of such a company's property and payroll will continue to have a significant impact on the computation of its sales factor.

Approximately a dozen states source receipts from intangible property to the state where the intangible is used. A few states, including Minnesota, Iowa, Ohio, and Georgia, attribute receipts from services to the state where the benefit of the service is received. Updating Wisconsin's sales factor for receipts from computer software, royalties and other receipts from licensing intangible property, and sales of services would provide an economic incentive for technology companies to remain in Wisconsin.

**RECOMMENDATION FOR ACTION**

To more fairly apportion the income of, and to promote the growth of, multistate Wisconsin-based technology companies and service providers, the computation of the sales factor should be updated to attribute receipts from computer software and intellectual property to the state where the property is used and receipts from services to the state where the benefit of the service is received.



**ADMINISTRATIVE IMPACT**

This proposal would provide clearer sourcing rules for receipts from computer software and other intellectual property and sales of services. Thus it would simplify compliance with and administration of the law.

**FAIRNESS /TAX EQUITY**

The move to single sales factor apportionment benefits multistate Wisconsin-based manufacturers and retailers. It is only fair to provide similar benefits to multistate Wisconsin-based technology companies and service providers by limiting the impact of their Wisconsin property and payroll on the computation of their sales factor.

**IMPACT ON ECONOMIC DEVELOPMENT****FISCAL EFFECT**

Some businesses would pay more taxes and some would pay less under this proposal. Information on where customers of service providers doing business in the state are located is not available to determine the fiscal effect of the proposal.

**DRAFTING INSTRUCTIONS**

See Attachment 1.

**EFFECTIVE DATE AND/OR INITIAL APPLICABILITY**

Taxable years that begin on January 1, 2005.

**INTERESTED/AFFECTED PARTIES**

Computer software companies, technology companies, service providers, trade associations, attorneys, and tax accountants

**DOR CONTACT PERSON**

Diane Hardt  
266-6798  
dhardt@dor.state.wi.us

**PREPARED BY** Carol Held

## **Attachment 1 — Drafting Instructions**

1. Repeal secs. 71.04 (7) (d) and 71.25 (9) (d) and create secs. 71.04 (7) (db), (dd), (df), (di), (dj), (dn), and (dp) and 71.25 (9) (db), (dd), (df), (di), (dj), (dn), and (dp) to read as follows:

(db) Gross receipts from the lease, rental, or licensing of real property owned by the taxpayer and the sublease of real property are in this state if the real property is located in this state.

(dd) 1. Except as provided in subd. 2., gross receipts from the lease, rental, or licensing of tangible personal property owned by the taxpayer and the sublease of tangible personal property are in this state if the property is located in this state during the entire period of lease, rental, licensing, sublease, or other use. If the property is used in and outside this state during the period of lease, rental, licensing, or sublease, gross receipts are in this state to the extent that the property is used in this state. The proportion of use in this state is determined by multiplying the gross receipts from the lease, rental, licensing, sublease, or other use of the property by a fraction having as a numerator the amount of time the property was used in this state in the taxable year and having as a denominator the total time the property was used in all states having jurisdiction to impose an income tax on the taxpayer in the taxable year.

2. Gross receipts from the lease, rental, or licensing of moving property, including motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, owned by the taxpayer and the sublease of moving property are in this state to the extent that the property is used in this state. The proportion of use of moving property in this state is determined as follows:

a. The proportion of use of a motor vehicle or rolling stock in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the motor vehicle or rolling stock by a fraction having as a numerator the number of miles traveled within this state by the motor vehicle or rolling stock while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of miles traveled by the motor vehicle or rolling stock while leased, rented, licensed, or subleased in the taxable year.

b. The proportion of use of an aircraft in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the aircraft by a fraction having as a numerator the number of takeoffs and landings of the aircraft in this

state while leased, rented, licensed, or subleased, in the taxable year and having as a denominator the total number of takeoffs and landings of the aircraft while leased, rented, licensed, or subleased in the taxable year.

c. The proportion of use of a vessel or mobile equipment in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the vessel or mobile equipment by a fraction having as a numerator the number of days that the vessel or mobile equipment is in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of days that the vessel or mobile equipment is leased, rented, licensed, or subleased in the taxable year.

d. If the taxpayer is unable to determine the use of moving property under subdivision paragraphs a., b., or c. while the property is leased, rented, licensed, or subleased in the taxable year, the moving property is conclusively deemed to be used in the state in which the property is located at the time that the lessee, renter, licensee, or sublessee takes possession of the property in the taxable year.

(df) For purposes of pars. (di), (dj), and (dn), the following definitions apply:

1. "Commercial domicile" means the place or location from which the trade or business is principally managed and directed. Factors to be considered include, but are not limited to, the location where the greatest number of employees of the trade or business work, have their office or base of operations, or from which such employees are directed or controlled.

2. "Domicile" means a natural person's true, fixed, and permanent home where that person intends to remain permanently and indefinitely and to which, whenever absent, that person intends to return. A natural person may have only one domicile at any time.

3. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

(di) Gross receipts from the use of computer software are in this state if the purchaser or licensee uses the computer software at a location in this state.

1. Computer software is used at a location in this state if the purchaser or licensee uses the computer software in the regular course of business operations in this state or for personal use in this state or if the purchaser or licensee is a natural person whose domicile is in this state. If the purchaser or licensee uses the computer software in more than one state, the gross receipts shall be divided among those states having

jurisdiction to impose an income tax on the taxpayer in proportion to the use of the computer software in those states. Factors to be considered include, but are not limited to, the number of users in each state, the number of site licenses or workstations in this state, or other data that reflects the relative usage of the computer software in this state.

2. If the taxpayer is not subject to income tax in the state in which the gross receipts are deemed received under this paragraph but the taxpayer's commercial domicile is in this state, 50 percent of those gross receipts shall be included in the numerator of the sales factor.

(dj) Gross royalties and other gross receipts received for the sale or use of intangible property, including but not limited to patents, copyrights, trademarks, trade names, service names, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, technical know-how, contracts, and customer lists, are in this state if the user, purchaser, or licensee uses the intangible property at a location in this state.

1. Intangible property is used at a location in this state if the user, purchaser, or licensee uses the property in the operation of a trade or business at a location in this state or for personal use in this state or if the user, purchaser, or licensee is a natural person whose domicile is in this state. If the user, purchaser, or licensee uses the intangible property in more than one state, the gross royalties and other gross receipts from the sale or use of the intangible property shall be divided among those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states. Factors to be considered include, but are not limited to, the number of licensed sites in each state, the volume of property manufactured, produced, or sold pursuant to the arrangement at locations in this state, or other data that reflects the relative usage of the intangible property in this state.

2. If the taxpayer is not subject to income tax in the state in which the gross royalties or other gross receipts are deemed received under this paragraph but the taxpayer's commercial domicile is in this state, 50 percent of those gross royalties or other gross receipts shall be included in the numerator of the sales factor.

(dn) Gross receipts from services are in this state if the purchaser of the service received the benefit of the service in this state.

1. The benefit of a service is received in this state if any of the following applies:

a. The service relates to real property that is located in this state.

b. The service relates to tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state.

c. The service is provided to a natural person who is physically present in this state at the time that the service is received.

d. The service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state.

2. If the purchaser of a service receives the benefit of a service in more than one state, the gross receipts from the performance of the service are included in the numerator of the sales factor according to the portion of the service received in this state.

3. If the taxpayer is not subject to income tax in the state in which the benefit of the service is received, the benefit of the service is received in this state to the extent that the taxpayer's employees or representatives performed services from a location in this state. Fifty percent of the taxpayer's receipts that are deemed received in this state under this subdivision shall be included in the numerator of the sales factor.

(dp) If the income from sales, other than sales of tangible personal property, properly assignable to this state cannot be ascertained with reasonable certainty by the methods under pars. (db), (dd), (df), (di), (dj), and (dn), the department may promulgate rules that specify how the income shall be apportioned.

2. Create secs. 71.04 (7) (e) 12. and 71.25 (9) (e) 12. to read as follows:

(e) 12. Gross receipts from sale, licensing or use of intangible property in the ordinary course of the taxpayer's trade or business.

3. Amend secs. 71.04 (7) (f) 5., 7, and 9 and 71.25 (9) (f) 5., 7., and 9., to read as follows:

(f) 5. ~~Proceeds~~ Notwithstanding any other provision within this section, proceeds and gain or loss from the redemption of securities.

(f) 7. Gross receipts and gain or loss from the sale of intangible assets, except those under par. (e) 1 and 12.

(f) 9. ~~Gross~~ Notwithstanding any other provision in this section, gross receipts and gain or loss from the sale or exchange of securities.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1656/1

JK:.....

Jld

BB0425 1/3 or 1/4

DOA:.....Koskinen - Single sales factor apportionment for computer software, intellectual property, and services

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

LPS - Please  
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in 1-13-05

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AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION** ✓

**INCOME TAXATION** ✓

Under current law, for purposes of computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a corporation's income to this state. The formula has three factors: a sales factor, a property factor, and a payroll factor. The sales factor represents 50 percent of the formula and the property and payroll factors each represent 25 percent of the formula. Under current law, beginning on January 1, 2008, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state. This bill modifies the sales factor to provide for the apportionment of income derived from the lease, rental, or licensing of real property and moving property, the use of computer software, and the sale or use of intangible property and services. ✓

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 71.01 (1b) of the statutes is created to read:

2           71.01 (1b) For purposes of s. 71.04 (7) (df), (dg), and (dh), "commercial domicile"  
3 means the location from which a trade or business is principally managed and  
4 directed, based on any factors the department determines are appropriate, including  
5 the location where the greatest number of employees of the trade or business work,  
6 have their office or base of operations, or from which the employees are directed or  
7 controlled.

8           **SECTION 2.** 71.01 (1n) of the statutes is created to read:

9           71.01 (1n) For purposes of s. 71.04 (7) (df), (dg), and (dh), "domicile" means an  
10 individual's true, fixed, and permanent home where the individual intends to remain  
11 indefinitely and to which, whenever absent, the individual intends to return, except  
12 that no individual may have more than one domicile at any time.

\*           \*\*\*\*NOTE: It is not clear to me what the terms "true" and "fixed" mean in this  
context. I also eliminated the phrase ~~that~~ describes a domicile as the permanent home  
"where the person intends to remain permanently" because it is problematic as well as  
redundant. I have lived at my current address for 10 years, but I have no intention of  
living there permanently. I have a feeling, however, that, for tax purposes, DOR would  
want me to consider my current address as my "domicile."

13           **SECTION 3.** 71.01 (8g) of the statutes is amended to read:

14           71.01 (8g) "Member" does not include a member of a limited liability company  
15 treated as a corporation under s. 71.22 (1) (1k).

History: 1987 a. 312; 1987 a. 411 ss. 6 to 8, 26, 27, 31; 1989 a. 31, 100, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194;  
2001 a. 109; 2003 a. 33.

16           **SECTION 4.** 71.01 (8m) of the statutes is amended to read:

17           71.01 (8m) "Partner" does not include a partner of a publicly traded  
18 partnership treated as a corporation under s. 71.22 (1) (1k).

History: 1987 a. 312; 1987 a. 411 ss. 6 to 8, 26, 27, 31; 1989 a. 31, 100, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194;  
2001 a. 109; 2003 a. 33.

19           **SECTION 5.** 71.01 (9g) of the statutes is created to read:

1 71.01 (9g) For purposes of s. 71.04 (7) (df), (dg), and (dh), ~~“State”~~ means a state  
2 of the United States, the District of Columbia, the commonwealth of Puerto Rico, or  
3 any territory or possession of the United States, unless the context requires that  
4 “state” means only the state of Wisconsin. ✓

5 SECTION 6. 71.03 (1) ✓ of the statutes is amended to read:

6 71.03 (1) DEFINITION. In this section, “gross income” means all income, from  
7 whatever source derived and in whatever form realized, whether in money, property  
8 or services, which is not exempt from Wisconsin income taxes. “Gross income”  
9 includes, but is not limited to, the following items: compensation for services,  
10 including salaries, wages and fees, commissions and similar items; gross income  
11 derived from business; interest; rents; royalties; dividends; alimony and separate  
12 maintenance payments; annuities; income from life insurance and endowment  
13 contracts; pensions; income from discharge of indebtedness; distributive shares of  
14 partnership gross income except distributive shares of the income of publicly traded  
15 partnerships treated as corporations under s. 71.22 (1) (1k); distributive shares of  
16 limited liability company gross income except distributive shares of the income of  
17 limited liability companies treated as corporations under s. 71.22 (1) (1k); income in  
18 respect of a decedent; and income from an interest in an estate or trust. “Gross  
19 income” from a business or farm consists of the total gross receipts without reduction  
20 for cost of goods sold, expenses or any other amounts. The gross rental amounts  
21 received from rental properties are included in gross income without reduction for  
22 expenses or any other amounts. “Gross income” from the sale of securities, property  
23 or other assets consists of the gross selling price without reduction for the cost of the  
24 assets, expenses of sale or any other amounts. “Gross income” from an annuity,



1 retirement plan or profit sharing plan consists of the gross amount received without  
2 reduction for the employee's contribution to the annuity or plan.

History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 3, 39, 269, 301, 307, 315; 1993 a. 16, 112, 204, 213, 491; 1995 a. 255, 428; 1999 a. 9; 2001 a. 23, 102; 2003 a. 83.

3 **SECTION 7.** 71.04 (7) (d) of the statutes is repealed.

4 **SECTION 8.** 71.04 (7) (db) of the statutes is created to read:

5 71.04 (7) (db) Gross receipts from the lease, rental, or licensing of real property  
6 owned by the taxpayer and the sublease of real property are in this state if the real  
7 property is located in this state.

8 **SECTION 9.** 71.04 (7) (dd) of the statutes is created to read:

9 71.04 (7) (dd) 1. Except as provided in subd. 2., gross receipts from the lease,  
10 rental, or licensing of tangible personal property owned by the taxpayer and the  
11 sublease of tangible personal property are in this state if the property is located in  
12 this state during the entire period of lease, rental, licensing, sublease, or other use.  
13 If the property is used in and outside this state during the period of lease, rental,  
14 licensing, or sublease, gross receipts are in this state to the extent that the property  
15 is used in this state. The proportion of use in this state is determined by multiplying  
16 the gross receipts from the lease, rental, licensing, sublease, or other use of the  
17 property by a fraction having as a numerator the amount of time the property was  
18 used in this state in the taxable year and having as a denominator the total time the  
19 property was used in all states having jurisdiction to impose an income tax on the  
20 taxpayer in the taxable year.

21 2. Gross receipts from the lease, rental, or licensing of moving property,  
22 including motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, owned  
23 by the taxpayer and the sublease of moving property are in this state to the extent

1 that the property is used in this state. The proportion of use of moving property in  
2 this state is determined as follows: ✓

3 a. The proportion of use of a motor vehicle or rolling stock in this state is  
4 determined by multiplying the gross receipts from the lease, rental, licensing, or  
5 sublease of the motor vehicle or rolling stock by a fraction having as a numerator the  
6 number of miles traveled within this state by the motor vehicle or rolling stock ✓ while  
7 leased, rented, licensed, or subleased in the taxable year and having as a  
8 denominator the total number of miles traveled by the motor vehicle or rolling stock  
9 while leased, rented, licensed, or subleased in the taxable year.

10 b. The proportion of use of an aircraft in this state is determined by multiplying  
11 the gross receipts from the lease, rental, licensing, or sublease of the aircraft by a  
12 fraction having as a numerator the number of takeoffs ✓ and landings of the aircraft  
13 in this state while leased, rented, licensed, or subleased in the taxable year and  
14 having as a denominator the total number of takeoffs and landings of the aircraft  
15 while leased, rented, licensed, or subleased in the taxable year.

16 c. The proportion of use of a vessel or mobile equipment in this state is  
17 determined by multiplying the gross receipts from the lease, rental, licensing, or  
18 sublease of the vessel or mobile equipment ✓ by a fraction having as a numerator the  
19 number of days that the vessel or mobile equipment is in this state while leased,  
20 rented, licensed, or subleased in the taxable year and having as a denominator the  
21 total number of days that the vessel or mobile equipment is leased, rented, licensed,  
22 or subleased in the taxable year.

23 d. If the taxpayer is unable to determine the use of moving property under  
24 subdivision 2. a., b., or c. ✓ while the property is leased, rented, licensed, or subleased  
25 in the taxable year, the moving property is conclusively deemed to be used in the state

1 in which the property is located at the time that the lessee, renter, licensee, or  
2 sublessee<sup>✓</sup> takes possession of the property in the taxable year.

3 **SECTION 10.** 71.04 (7) (df)<sup>✓</sup> of the statutes is created to read:

4 71.04 (7) (df) 1. Gross receipts from the use of computer software are in this  
5 state if the purchaser or licensee uses the computer software at a location in this  
6 state.

7 2. Computer software is used at a location in this state if the purchaser or  
8 licensee uses the computer software in the regular course of business operations in  
9 this state, for personal use in this state, or if the purchaser or licensee is an  
10 individual whose domicile<sup>✓</sup> is in this state. If the purchaser or licensee uses the  
11 computer software in more than one state, the gross receipts shall be divided among  
12 those states having jurisdiction to impose an income tax on the taxpayer in  
13 proportion to the use of the computer software in those states. To determine  
14 computer software use in this state, the department may consider<sup>✓</sup> the number of  
15 users in each state where the computer software is used, the number of site licenses  
16 or workstations in this state, and any other data that reflects the use of computer  
17 software in this state.

18 3. If the taxpayer is not subject to income tax in the state in which the gross  
19 receipts are considered received under this paragraph, but the taxpayer's  
20 commercial domicile is in this state, 50<sup>✓</sup> percent of those gross receipts shall be  
21 included in the numerator of the sales factor.

22 **SECTION 11.** 71.04 (7) (dg)<sup>✓</sup> of the statutes is created to read:

23 71.04 (7) (dg) 1. Gross royalties and other gross receipts received for the sale  
24 or use of intangible<sup>✓</sup> property, including patents, copyrights, trademarks, trade  
25 names, service names, franchises, licenses, plans, specifications, blueprints,

1 processes, techniques, formulas, designs, layouts, patterns, drawings, manuals,  
2 technical know-how, contracts, and customer lists, are in this state if the user,  
3 purchaser, or licensee uses the intangible property at a location in this state.

4 2. Intangible property is used at a location in this state if the user, purchaser,  
5 or licensee uses the property in the operation of a trade or business at a location in  
6 this state, for personal use in this state, or if the user, purchaser, or licensee is an  
7 individual whose domicile is in this state. If the user, purchaser, or licensee uses the  
8 intangible property in more than one state, the gross royalties and other gross  
9 receipts from the sale or use of the intangible property shall be divided among those  
10 states having jurisdiction to impose an income tax on the taxpayer in proportion to  
11 the use of the intangible property in those states. To determine intangible property  
12 use in this state, the department may consider the number of licensed sites in each  
13 state, the volume of property manufactured, produced, or sold pursuant to the  
14 arrangement at locations in this state, or any other data that reflects the use of the  
15 intangible property in this state.

\*\*\*NOTE: I do not know the meaning of the phrase "pursuant to the arrangement  
at locations in this state." What arrangement? Please clarify.

16 3. If the taxpayer is not subject to income tax in the state in which the gross  
17 royalties or other gross receipts are considered received under this paragraph, but  
18 the taxpayer's commercial domicile is in this state, 50 percent of those gross royalties  
19 or other gross receipts shall be included in the numerator of the sales factor.

20 **SECTION 12.** 71.04 (7) (dh) of the statutes is created to read:

21 71.04 (7) (dh) 1. Gross receipts from services are in this state if the purchaser  
22 of the service received the benefit of the service in this state.

23 2. The benefit of a service is received in this state if any of the following applies:

1 a. The service relates to real property that is located in this state.

2 b. The service relates to tangible personal property that is located in this state  
3 at the time that the service is received or tangible personal property that is delivered  
4 directly or indirectly to customers in this state.

5 c. The service is provided to an individual who is physically present in this state  
6 at the time that the service is received.

7 d. The service is provided to a person engaged in a trade or business in this state  
8 and relates to that person's business in this state.

9 3. If the purchaser of a service receives the benefit of a service in more than one  
10 state, the gross receipts from the performance of the service are included in the  
11 numerator of the sales factor according to the portion of the service received in this  
12 state.

13 4. If the taxpayer is not subject to income tax in the state in which the benefit  
14 of the service is received, the benefit of the service is received in this state to the  
15 extent that the taxpayer's employees or representatives performed services from a  
16 location in this state and 50<sup>✓</sup> percent of the taxpayer's receipts that are considered  
17 received in this state under this paragraph<sup>✓</sup> shall be included in the numerator of the  
18 sales factor.

19 **SECTION 13.** 71.04 (7) (dm)<sup>✓</sup> of the statutes is created to read:

20 71.04 (7) (dm) If the income from sales assigned to this state under pars. (db),  
21 (dd), (df), (dg), and (dh)<sup>✓</sup> cannot be ascertained with reasonable certainty by the  
22 methods under pars. (db), (dd), (df), (dg), and (dh), the<sup>✓</sup> department may promulgate  
23 rules that specify how the income shall be apportioned.

24 **SECTION 14.** 71.04 (7) (e) 12.<sup>✓</sup> of the statutes is created to read:

1 71.04 (7) (e) 12. Gross receipts from the sale, licensing, or use of intangible  
2 property in the ordinary course of the taxpayer's trade or business.

3 SECTION 15. 71.04 (7) (f) 5. ✓ of the statutes is amended to read:

4 71.04 (7) (f) 5. Proceeds Notwithstanding any other provision of this  
5 subsection, ✓ proceeds and gain or loss from the redemption of securities.

History: 1987 a. 312; 1987 a. 411 ss. 34 to 40, 61; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39, 189, 269; 1993 a. 112, 204, 491; 1995 a. 27; 1997 a. 27, 237; 1999 a. 9; 2003 a. 37.

6 SECTION 16. 71.04 (7) (f) 7. ✓ of the statutes is amended to read:

7 71.04 (7) (f) 7. Gross receipts and gain or loss from the sale of intangible assets,  
8 except those under par. (e) 1 <sup>plain</sup> and 12. ✓

History: 1987 a. 312; 1987 a. 411 ss. 34 to 40, 61; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39, 189, 269; 1993 a. 112, 204, 491; 1995 a. 27; 1997 a. 27, 237; 1999 a. 9; 2003 a. 37.

9 SECTION 17. 71.04 (7) (f) 9. ✓ of the statutes is amended to read:

10 71.04 (7) (f) 9. Gross Notwithstanding any other provision of this subsection,  
11 gross ✓ receipts and gain or loss from the sale or exchange of securities.

History: 1987 a. 312; 1987 a. 411 ss. 34 to 40, 61; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39, 189, 269; 1993 a. 112, 204, 491; 1995 a. 27; 1997 a. 27, 237; 1999 a. 9; 2003 a. 37.

12 SECTION 18. 71.07 (3m) (a) 1. b. of the statutes is amended to read:

13 71.07 (3m) (a) 1. b. For partnerships except publicly traded partnerships  
14 treated as corporations under s. 71.22 (1) (1k), ✓ or limited liability companies, except  
15 limited liability companies treated as corporations under s. 71.22 (1) (1k), "claimant"  
16 means each individual partner or member.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 2, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135, 183, 255, 267, 326.

17 SECTION 19. 71.07 (10) of the statutes is amended to read:

18 71.07 (10) CREDITS NOT ALLOWED. The credits under s. 71.28 (4) and (5) may not  
19 be claimed by partners, including partners of a publicly traded partnership treated  
20 as a corporation under s. 71.22 (1) (1k), ✓ members of a limited liability company,

1 including members of a limited liability company treated as a corporation under s.  
2 77.22 (1) ~~(1)~~ (1k), or shareholders of a tax-option corporation.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135, 183, 255, 267, 326.

3 SECTION 20. 71.195 of the statutes is amended to read:

4 71.195 Definition. In this subchapter, "partnership" includes limited liability  
5 companies and other entities that are treated as partnerships under the Internal  
6 Revenue Code, and "partnership" does not include publicly traded partnerships  
7 treated as corporations under s. 71.22 (1) ~~(1)~~ (1k).

History: 1997 a. 27.

8 SECTION 21. 71.22 (1) ~~(1)~~ of the statutes is renumbered 71.22 (1k).

9 SECTION 22. 71.22 (1g) of the statutes is created to read:

10 71.22 (1g) For purposes of s. 71.25 (9) (df), (dg), and (dh), "commercial domicile"  
11 means the location from which a trade or business is principally managed and  
12 directed, based on any factors the department determines are appropriate, including  
13 the location where the greatest number of employees of the trade or business work,  
14 have their office or base of operations, or from which the employees are directed or  
15 controlled.

16 SECTION 23. 71.22 (1~~6~~) of the statutes is created to read:

17 71.22 (1~~6~~) For purposes of s. 71.25 (9) (df), (dg), and (dh), "domicile" means an  
18 individual's true, fixed, and permanent home where the individual intends to remain  
19 indefinitely and to which, whenever absent, the individual intends to return, except  
20 that no individual may have more than one domicile at any time.

\*\*\*\*NOTE: See the note following s. 71.01 (1n).

21 SECTION 24. 71.22 (6m) of the statutes is amended to read:

1           71.22 (6m) “Member” does not include a member of a limited liability company  
2           treated as a corporation under sub. (1) (1k).✓

History: 1987 a. 312; 1987 a. 411 ss. 14, 19, 109, 112; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237, 252, 299; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33.

3           **SECTION 25.** 71.22 (7m)✓ of the statutes is amended to read:

4           71.22 (7m) “Partner” does not include a partner of a publicly traded  
5           partnership treated as a corporation under sub. (1) (1k).✓

History: 1987 a. 312; 1987 a. 411 ss. 14, 19, 109, 112; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237, 252, 299; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33.

6           **SECTION 26.** 71.22 (9g)✓ of the statutes is created to read:

7           71.22 (9g) For purposes of s. 71.25 (9) (df), (dg), and (dh),✓ “~~S~~State” means a state  
8           of the United States, the District of Columbia, the commonwealth of Puerto Rico, or  
9           any territory or possession of the United States, unless the context requires that  
10          “state” means only the state of Wisconsin.✓

11          **SECTION 27.** 71.25 (9) (d)✓ of the statutes is repealed.

12          **SECTION 28.** 71.25 (9) (db)✓ of the statutes is created to read:

13          71.25 (9) (db) Gross receipts from the lease, rental, or licensing of real property  
14          owned by the taxpayer and the sublease of real property are in this state if the real  
15          property is located in this state.

16          **SECTION 29.** 71.25 (9) (dd)✓ of the statutes is created to read:

17          71.25 (9) (dd) 1. Except as provided in subd. 2.,✓ gross receipts from the lease,  
18          rental, or licensing of tangible personal property owned by the taxpayer and the  
19          sublease of tangible personal property are in this state if the property is located in  
20          this state during the entire period of lease, rental, licensing, sublease, or other use.  
21          If the property is used in and outside this state during the period of lease, rental,  
22          licensing, or sublease, gross receipts are in this state to the extent that the property  
23          is used in this state. The proportion of use in this state is determined by multiplying



1 the gross receipts from the lease, rental, licensing, sublease,<sup>✓</sup> or other use of the  
2 property by a fraction having as a numerator the amount of time the property was  
3 used in this state in the taxable year and having as a denominator the total time the  
4 property was used in all states having jurisdiction to impose an income tax on the  
5 taxpayer in the taxable year.

6 2. Gross receipts from the lease, rental, or licensing of moving property,  
7 including motor vehicles, rolling stock, aircraft, vessels, or mobile equipment,<sup>✓</sup> owned  
8 by the taxpayer and the sublease of moving property are in this state to the extent  
9 that the property is used in this state. The proportion of use of moving property in  
10 this state is determined as follows:<sup>✓</sup>

11 a. The proportion of use of a motor vehicle or rolling stock in this state is  
12 determined by multiplying the gross receipts from the lease, rental, licensing, or  
13 sublease of the motor vehicle or rolling stock by a fraction having as a numerator the  
14 number of miles traveled within this state by the motor vehicle or rolling stock while  
15 leased, rented, licensed, or subleased in the taxable year and having as a  
16 denominator the total number of miles traveled by the motor vehicle or rolling stock  
17 while leased, rented, licensed, or subleased in the taxable year.

18 b. The proportion of use of an aircraft in this state is determined by multiplying  
19 the gross receipts from the lease, rental, licensing, or sublease of the aircraft by a  
20 fraction having as a numerator the number of takeoffs and landings of the aircraft  
21 in this state while leased, rented, licensed, or subleased in the taxable year and  
22 having as a denominator the total number of takeoffs and landings of the aircraft  
23 while leased, rented, licensed, or subleased in the taxable year.

24 c. The proportion of use of a vessel or mobile equipment in this state is  
25 determined by multiplying the gross receipts from the lease, rental, licensing, or

1 sublease of the vessel or mobile equipment by a fraction having as a numerator the  
2 number of days that the vessel or mobile equipment is in this state while leased,  
3 rented, licensed, or subleased in the taxable year and having as a denominator the  
4 total number of days that the vessel or mobile equipment is leased, rented, licensed,  
5 or subleased in the taxable year.

6 d. If the taxpayer is unable to determine the use of moving property under  
7 subdivision 2. a., b., or c. while the property is leased, rented, licensed, or subleased  
8 in the taxable year, the moving property is conclusively deemed to be used in the state  
9 in which the property is located at the time that the lessee, renter, licensee, or  
10 sublessee takes possession of the property in the taxable year.

11 **SECTION 30.** 71.25 (9) (df) of the statutes is created to read:

12 71.25 (9) (df) 1. Gross receipts from the use of computer software are in this  
13 state if the purchaser or licensee uses the computer software at a location in this  
14 state.

15 2. Computer software is used at a location in this state if the purchaser or  
16 licensee uses the computer software in the regular course of business operations in  
17 this state, for personal use in this state, or if the purchaser or licensee is an  
18 individual whose domicile is in this state. If the purchaser or licensee uses the  
19 computer software in more than one state, the gross receipts shall be divided among  
20 those states having jurisdiction to impose an income tax on the taxpayer in  
21 proportion to the use of the computer software in those states. To determine  
22 computer software use in this state, the department may consider the number of  
23 users in each state where the computer software is used, the number of site licenses  
24 or workstations in this state, and any other data that reflects the use of computer  
25 software in this state.

1           3. If the taxpayer is not subject to income tax in the state in which the gross  
2 receipts are considered received under this paragraph, but the taxpayer's  
3 commercial domicile is in this state, 50 percent of those gross receipts shall be  
4 included in the numerator of the sales factor.

5           **SECTION 31.** 71.25 (9) (dg) of the statutes is created to read:

6           71.25 (9) (dg) 1. Gross royalties and other gross receipts received for the sale  
7 or use of intangible property, including patents, copyrights, trademarks, trade  
8 names, service names, franchises, licenses, plans, specifications, blueprints,  
9 processes, techniques, formulas, designs, layouts, patterns, drawings, manuals,  
10 technical know-how, contracts, and customer lists, are in this state if the user,  
11 purchaser, or licensee uses the intangible property at a location in this state.

12           2. Intangible property is used at a location in this state if the user, purchaser,  
13 or licensee uses the property in the operation of a trade or business at a location in  
14 this state, for personal use in this state, or if the user, purchaser, or licensee is an  
15 individual whose domicile is in this state. If the user, purchaser, or licensee uses the  
16 intangible property in more than one state, the gross royalties and other gross  
17 receipts from the sale or use of the intangible property shall be divided among those  
18 states having jurisdiction to impose an income tax on the taxpayer in proportion to  
19 the use of the intangible property in those states. To determine intangible property  
20 use in this state, the department may consider the number of licensed sites in each  
21 state, the volume of property manufactured, produced, or sold pursuant to the  
22 arrangement at locations in this state, or any other data that reflects the use of the  
23 intangible property in this state.

\*\*\*\*NOTE: I do not know the meaning of the phrase "pursuant to the arrangement  
at locations in this state." What arrangement? Please clarify.

1           3. If the taxpayer is not subject to income tax in the state in which the gross  
2 royalties or other gross receipts are considered received under this<sup>✓</sup> paragraph, but  
3 the taxpayer's commercial domicile is in this state, 50 percent of those gross royalties  
4 or other gross receipts shall be included in the numerator of the sales factor.

5           **SECTION 32.** 71.25 (9) (dh)<sup>✓</sup> of the statutes is created to read:

6           71.25 (9) (dh) 1. Gross receipts from services are in this state if the purchaser  
7 of the service received the benefit of the service in this state.

8           2. The benefit of a service is received in this state if any of the following applies:<sup>✓</sup>

9           a. The service relates to real property that is located in this state.

10          b. The service relates to tangible personal property that is located in this state  
11 at the time that the service is received or tangible personal property that is delivered  
12 directly or indirectly to customers in this state.

13          c. The service is provided to an individual who is physically present in this state  
14 at the time that the service is received.

15          d. The service is provided to a person engaged in a trade or business in this state  
16 and relates to that person's business in this state.

17          3. If the purchaser of a service receives the benefit of a service in more than one  
18 state, the gross receipts from the performance of the service are included in the  
19 numerator of the sales factor according to the portion of the service received in this  
20 state.

21          4. If the taxpayer is not subject to income tax in the state in which the benefit  
22 of the service is received, the benefit of the service is received in this state to the  
23 extent that the taxpayer's employees or representatives performed services from a  
24 location in this state and 50 percent of the taxpayer's receipts that are considered

received in this state under this paragraph shall be included in the numerator of the sales factor.

**SECTION 33.** 71.25 (9) (dm) of the statutes is created to read:

71.25 (9) (dm) If the income from sales assigned to this state under pars. (db), (dd), (df), (dg), and (dh) cannot be ascertained with reasonable certainty by the methods under pars. (db), (dd), (df), (dg), and (dh), the department may promulgate rules that specify how the income shall be apportioned.

**SECTION 34.** 71.25 (9) (e) 12. of the statutes is created to read:

71.25 (9) (e) 12. Gross receipts from the sale, licensing, or use of intangible property in the ordinary course of the taxpayer's trade or business.

**SECTION 35.** 71.25 (9) (f) 5. of the statutes is amended to read:

71.25 (9) (f) 5. Proceeds Notwithstanding any other provision of this subsection, proceeds and gain or loss from the redemption of securities.

History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9; 2001 a. 16; 2003 a. 37.

**SECTION 36.** 71.25 (9) (f) 7. of the statutes is amended to read:

71.25 (9) (f) 7. Gross receipts and gain or loss from the sale of intangible assets, except those under par. (e) <sup>plain</sup> ~~1 and 12.~~

History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9; 2001 a. 16; 2003 a. 37.

**SECTION 37.** 71.25 (9) (f) 9. of the statutes is amended to read:

71.25 (9) (f) 9. Gross Notwithstanding any other provision of this subsection, gross receipts and gain or loss from the sale or exchange of securities.

History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9; 2001 a. 16; 2003 a. 37.

**SECTION 38.** 71.28 (2m) (a) 1. b. of the statutes is amended to read:

71.28 (2m) (a) 1. b. For partnerships, except publicly traded partnerships treated as corporations under s. 71.22 (4) (1k), or limited liability companies, except

1 limited liability companies treated as corporations under s. 71.22 (1) ~~(1)~~ (1k), “claimant”  
2 means each individual partner or member.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326.

3 **SECTION 39.** 71.28 (4) (i) of the statutes is amended to read:

4 71.28 (4) (i) *Nonclaimants.* The credits under this subsection may not be  
5 claimed by a partnership, except a publicly traded partnership treated as a  
6 corporation under s. 71.22 (1) ~~(1)~~ (1k), limited liability company, except a limited  
7 liability company treated as a corporation under s. 71.22 (1) ~~(1)~~ (1k), or tax-option  
8 corporation or by partners, including partners of a publicly traded partnership,  
9 members of a limited liability company or shareholders of a tax-option corporation.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326.

10 **SECTION 40.** 71.42 (3d) of the statutes is amended to read:

11 71.42 (3d) “Member” does not include a member of a limited liability company  
12 treated as a corporation under s. 71.22 (1) ~~(1)~~ (1k).

History: 1987 a. 312; 1987 a. 411 ss. 5, 148, 149; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33.

13 **SECTION 41.** 71.42 (3h) of the statutes is amended to read:

14 71.42 (3h) “Partner” does not include a partner of a publicly traded partnership  
15 treated as a corporation under s. 71.22 (1) ~~(1)~~ (1k).

History: 1987 a. 312; 1987 a. 411 ss. 5, 148, 149; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33.

16 **SECTION 42.** 71.47 (2m) (a) 1. b. of the statutes is amended to read:

17 71.47 (2m) (a) 1. b. For partnerships, except publicly traded partnerships  
18 treated as corporations under s. 71.22 (1) ~~(1)~~ (1k), or limited liability companies, except  
19 limited liability companies treated as corporations under s. 71.22 (1) ~~(1)~~ (1k), “claimant”

20 means each individual partner or member.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326.

21 **SECTION 43.** 71.47 (4) (i) of the statutes is amended to read:

1           71.47 (4) (i) *Nonclaimants*. The credits under this subsection may not be  
 2       claimed by a partnership, except a publicly traded partnership treated as a  
 3       corporation under s. 71.22 (1) (1k), limited liability company, except a limited  
 4       liability company treated as a corporation under s. 71.22 (1) (1k), or tax-option  
 5       corporation or by partners, including partners of a publicly traded partnership,  
 6       members of a limited liability company or shareholders of a tax-option corporation.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 265, 267, 326.

7           **SECTION 44.** 71.58 (1) (c) of the statutes is amended to read:

8           71.58 (1) (c) For partnerships except publicly traded partnerships treated as  
 9       corporations under s. 71.22 (1) (1k), "claimant" means each individual partner.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112.

10          **SECTION 45.** 71.58 (1) (cm) of the statutes is amended to read:

11          71.58 (1) (cm) For limited liability companies, except limited liability  
 12       companies treated as corporations under s. 71.22 (1) (1k), "claimant" means each  
 13       individual member.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112.

14          **SECTION 9341. Initial applicability; revenue.**

15          (1) SINGLE SALES FACTOR APPORTIONMENT. The treatment of sections 71.01 (1b),  
 16       (1n), (8g), (8m), and (9g), 71.03 (1), 71.04 (7) (d), (db), (dd), (df), (dg), (dh), (dm), (e)  
 17       12., and (f) 5., 7., and 9., 71.07 (3m) (a) 1. b., and (10), 71.195, 71.22 (1), (1g), (1h), (6m),  
 18       (7m), and (9g), 71.25 (9) (d), (db), (dd), (df), (dg), (dh), (dm), (e) 12., and (f) 5., 7., and  
 19       9., 71.28 (2m) (a) 1. b. and (4) (i), 71.42 (3d) and (3h), 71.47 (2m) (a) 1. b. and (4) (i),  
 20       and 71.58 (1) (c) and (cm) of the statutes first applies to taxable years beginning on  
 21       January 1, 2005.

(a), (am), and  
(END)

(a), (am),  
and

INSERT 9-11

SECTION #. AM; 71.07(2dr)(a)

(2dr) ③

71.07 (a) *Credit.* Any person may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the person's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" include only expenses incurred by the claimant in a development zone under subch. VI of ch. 560, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" do not include compensation used in computing the credit under sub. (2dj) nor research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), the person's base amount, as defined in section 41 (c) of the internal revenue code, in a development zone, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.04 (7) (b) 1. and 2. ~~and (d)~~ and research expenses used in calculating the base amount include research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit under this paragraph. The rules under sub. (2di) (f) and (g), as they apply to the credit under that subsection, apply to claims under this paragraph. Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

(end ins 9-11)



(INSERT 17-2)

→ SECTION #. Am; 71.28(4)(a)

71.28(4)(a)

1. (a) Credit. Any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" includes only expenses incurred by the claimant, incurred for research conducted in this state for the taxable year, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" does not include compensation used in computing the credit under subs. (1dj) and (1dx), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d)~~. Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

→ SECTION #. Am; 71.28(4)(am)1.

71.28(4)(am)

(am) Development zone additional research credit.

71.28(4)(am)1.

1. (a) In addition to the credit under par. (a), any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" include only expenses incurred by the claimant in a development zone under subch. VI of ch. 560, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" do not include compensation used in computing the credit under sub. (1dj) nor research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, in a development zone, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d)~~ and research expenses used in calculating the base amount include research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit under this subdivision. The rules under sub. (1di) (f) and (g) as they apply to the credit under that subsection apply to claims under this subdivision. Section 41 (h) of the internal revenue code does not apply to the credit under this subdivision.

(end ins 17-2)

SECTION #. AM; 71.47(4)(a) INSERT 17-20

71.47(4)(a)

1(a) *Credit.* Any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" includes only expenses incurred by the claimant, incurred for research conducted in this state for the taxable year, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" does not include compensation used in computing the credit under subs. (1dj) and (1dx), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d)~~. Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

→ SECTION #. AM; 71.47(4)(am)

71.47(4)(am)

1(am) *Development zone additional research credit.* In addition to the credit under par. (a), any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" include only expenses incurred by the claimant in a development zone under subch. VI of ch. 560, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" do not include compensation used in computing the credit under sub. (1dj) nor research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, in a development zone, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d)~~ and research expenses used in calculating the base amount include research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit under this paragraph. The rules under sub. (1di) (f) and (g) as they apply to the credit under that subsection apply to claims under this paragraph. Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph. No credit may be claimed under this paragraph for taxable years that begin on January 1, 1998, or thereafter. Credits under this paragraph for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(end ins 17-20)

1656/1

**Kreye, Joseph**

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**From:** Kraus, Jennifer - DOA  
**Sent:** Friday, January 21, 2005 12:02 AM  
**To:** Kreye, Joseph  
**Subject:** FW: LRB Draft: 05-1656/1 Single sales factor apportionment for computer software, intellectual property, and services

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged



LRB 1656-1  
Apportionment for I.  
More comments from DOR...Jennifer

-----Original Message-----

**From:** Lashore, Patricia M  
**Sent:** Thursday, January 20, 2005 3:26 PM  
**To:** Kraus, Jennifer - DOA  
**Subject:** LRB Draft: 05-1656/1 Single sales factor apportionment for computer software, intellectual property, and services

Here are the comments/edits on this draft.

**CORRESPONDENCE/MEMORANDUM****STATE OF WISCONSIN**  
**Department of Revenue**

**Date:** January 21, 2005  
**To:** Pat Lashore  
**From:** Carol Held  
**Subject:** LRB 1656/1 – Single Sales Factor Apportionment for Computer Software, Intellectual Property, and Services

The following changes are needed to this draft:

- ✓ 1. Bill section 2, page 2, line 11; and bill section 24, page 11, line 11: The drafter questions the language proposed by the department. The department's proposed language was taken from case law relating to an individual's domicile. To conform to case law with respect to "domicile," insert "permanently and" before "indefinitely" as we had requested.
- ✓ 2. Bill section 5, page 2, line 20: If the definitions are meant to be alphabetical, the definition of "state" should come after "small business stock" rather than before it.
- ✓ 3. Bill section 10, page 6, line 13; and bill section 31, page 14, line 13: Change "data" to "factors." The term "data" appears to be too limiting.
- ✓ 4. Bill section 11, page 6, line 20; and bill section 32, page 14, line 20: After "including" insert ", but not limited to,". Many people believe that when the term "including" is used, only the items listed are covered. We want to make it perfectly clear that the list is not all-inclusive to avoid legal challenges.
- ✓ 5. Bill section 11, page 7, lines 10 and 11; and bill section 32, page 15, lines 10 and 11: Delete "pursuant to the arrangement".
- ✓ 6. Bill section 11, page 7, line 11; and bill section 32, page 15, line 11: Change "data" to "factors." The term "data" appears to be too limiting.
- ✓ 7. Bill section 12, page 8, line 15; and bill section 33, page 16, line 15: There should be a period after the word "state". "Fifty percent" should be the start of a new sentence. The first part of the sentence is the sourcing rule. The intent of the second part of the sentence is to require only half of the amount sourced to Wisconsin under this rule to be included in the sales factor.
- ✓ 8. Bill section 13, page 8, lines 19 through 22; and bill section 34, page 16, lines 19 through 22: This sentence does not make sense. If the income from sales is "assigned" under one of the other paragraphs, it is a contradiction to say that the income "cannot be ascertained with reasonable certainty". For this reason, we would prefer the language as we had originally submitted:

If the income from sales, other than sales of tangible personal property, properly assignable to this state cannot be ascertained with reasonable certainty by the methods under pars. (db), (dd),

(df), (dg), and (dh), the department may promulgate rules that specify how the income shall be apportioned.

9. Bill section 18, page 9, line 24; bill section 40, page 18, line 3; bill section 41, page 18, line 19; bill section 46, page 20, line 10; bill section 47, page 21, line 2: For purposes of the research credits, gross receipts from intangibles should continue to be included in the calculation. A reference should be added to (db), (dd), (df), (dg), (dh), and (dm).